



Department of Planning, Building and Code Enforcement

STEPHEN M. HAASE, AICP, DIRECTOR

**PUBLIC NOTICE
INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION
CITY OF SAN JOSÉ, CALIFORNIA**

Project File Number, Description, and Location

PP03-04-134. Public project to allow the completion of a three-phased plan to sequentially construct multi-use trails paralleling Penitencia Creek and more active recreational facilities within Mabury Park. (City of San Jose/Santa Clara Valley Water District/County of Santa Clara, Owner, City of San Jose, Developer). Council District: 4

California State Law requires the City of San José to conduct environmental review for all pending projects that require a public hearing. Environmental review examines the nature and extent of any potentially significant adverse effects on the environment that could occur if a project is approved and implemented. The Director of Planning, Building & Code Enforcement would require the preparation of an Environmental Impact Report if the review concluded that the proposed project could have a significant unavoidable effect on the environment. The California Environmental Quality Act (CEQA) requires this notice to disclose whether any listed toxic sites are present. The project location **does not** contain a listed toxic site.

Based on an initial study, the Director has concluded that the project described above will not have a significant effect on the environment. We have sent this notice to all owners and occupants of property within 500 feet of the proposed project to inform them of the Director's intent to adopt a Mitigated Negative Declaration for the proposed project on **May 30, 2003**, and to provide an opportunity for public comments on the draft Mitigated Negative Declaration. The public review period for this draft Mitigated Negative Declaration begins on **May 1, 2003** and ends on **May 30, 2003**.

The draft Mitigated Negative Declaration, initial study, and reference documents are available for review under the above file number from 9:00 a.m. to 5:00 p.m. Monday through Friday at the City of San Jose Department of Planning, Building & Code Enforcement, City Hall, 801 N. First Street, Room 400, San Jose, CA 95110. The documents are also available at the Dr. Martin Luther King, Jr. Main Library, 180 W. San Carlos Street, and the Educational Park Branch Library, 1770 Educational Park Dr., San José, CA 95120 San Jose, and online at www.ci.san-jose.ca.us/planning/sjplan/eir/mnd2003.htm. Adoption of a Negative Declaration does not constitute approval of the proposed project. The decision to approve or deny the project described above will be made separately as required by City Ordinance. For additional information, please call **Susie Pineda** at (408) 277-4576.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: April 30, 2003

Deputy

**DRAFT
MITIGATED NEGATIVE DECLARATION**

The Director of Planning, Building and Code Enforcement has reviewed the proposed project described below to determine whether it could have a significant effect on the environment as a result of project completion. "Significant effect on the environment" means a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.

NAME OF PROJECT: Mabury Park/Penitencia Creek Park Chain – Reach 6 Master Plan

PROJECT FILE NUMBER: PP03-04-134

PROJECT DESCRIPTION: The completion of a three-phased plan to sequentially construct multi-use trails paralleling Penitencia Creek and more active recreational facilities within Mabury Park.

PROJECT LOCATION & ASSESSORS PARCEL NO.: A 29-acre lineal open space area around Penitencia Creek northeast of North King Road to a location 450 northeast of the intersection of North Jackson Avenue and Mossdale Way and a 3.2 acre flag shaped parcel (APN: 254-19-013, -014, -033, -040, -042, -046, 254-42-016)

COUNCIL DISTRICT: 4

NAME OF APPLICANT: City of San Jose Department of Public Works

MAILING ADDRESS AND PHONE NO. OF APPLICANT CONTACT PERSON:

Jan Palajac, Department of Public Works, Parks and Recreation Facilities Division, 2 North Second Street, Suite 700, San Jose, CA 95113; (408) 794-1376

FINDING

The Director of Planning, Building & Code Enforcement finds the project described above will not have a significant effect on the environment in that the attached initial study identifies one or more potentially significant effects on the environment for which the project applicant, before public release of this draft Mitigated Negative Declaration, has made or agrees to make project revisions that clearly mitigate the effects to a less than significant level.

MITIGATION MEASURES INCLUDED IN THE PROJECT TO REDUCE POTENTIALLY SIGNIFICANT EFFECTS TO A LESS THAN SIGNIFICANT LEVEL

1. AIR QUALITY.

- a. To prevent significant dust emissions during grading activities, which would degrade air quality for the surrounding residential area, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall implement the following measures during all phases of construction on the project site.
 - Cover all trucks hauling debris or excess fill from the site;
 - Water all active construction areas at least twice daily with a water truck that procures its water from off-site;
 - Water daily or cover stockpiles of debris, soil, sand or other materials that can be blown by the wind;
 - Apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites;
 - Sweep daily (preferably with water sweepers) all paved access roads, parking areas and staging areas at the construction site as well as adjacent public streets if visible soil material is carried onto these streets; and;

- Post a sign that is visible to persons walking or driving by the edge of the site where active construction is occurring that provides the name of contact person (e.g. disturbance coordinator) and phone number to call if residents are experiencing dusty problems in the area. The sign shall remain posted during the entire construction phase at that portion of the site.
- b. To prevent dust from leaving after the construction activities have been completed, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall require preparation of an erosion control plan for review and approval by the City Planning Department prior to any site disturbance and construction on the site. The plan shall include implementation of the following measure to reduce long-term dust impacts generated from areas of exposed earthen surfaces. Immediately after land alteration and/or construction activities have been completed within each specific area of the project site all disturbed areas shall be revegetated with seed and mulching, ground cover plantings and mulching or hydroseed and hydromulch as applicable for that portion of the site. These measures shall be specified on the final construction plans for the project and included in any construction contract for the project if a private construction firm is used for any component of the project.

2. BIOLOGICAL RESOURCES.

- a. To minimize post-construction indirect impacts to wildlife and riparian habitat from trail and bridge use, the trails along the Reach 6 corridor shall be set back from the existing outer edge of the riparian tree canopy by a minimum of 10 feet, as shown on project plans (except for bridge crossings, trail connections to the bridges in phases 2 and 3 and use of existing SCVWD maintenance roads in Phase 1). The City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall show the 10-foot setback from the dripline on the construction plans for each construction phase. As depicted on the Master Plan, all active recreation at the Mabury Park site (e.g. structures, imperious surfaces, active play areas) shall be setback a minimum setback of 100 feet from the edge of the riparian woodland. This distance shall be shown on the construction plans for the park.
- b. To compensate for the removal of 4,900 square feet of riparian habitat (including ordinance sized trees) from trail and bridge construction, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall implement a riparian revegetation plan. The plan specifies a 3:1 riparian habitat replacement ratio (i.e. 3 linear feet of native vegetation for each linear foot removed) to provide native riparian vegetation. The revegetation plan shall also include a 5-year maintenance and monitoring period. Monitoring shall occur at least once per year and incorporate success criteria of 80% plant survival during each year of the monitoring period. If this success criteria is not achieved at the end of year 5, maintenance and monitoring activities shall continue in annual increments until the success criteria is achieved.

The City of San Jose Department of Public Works and Recreation Facilities Division shall include the approved riparian revegetation plan as part of the final construction plans for the trail project and implement the plan as approved.

- c. To prevent cumulative loss or riparian habitat from occurring during the three phases of the trail portion of the Master Plan, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall remove all facilities installed within the Phase 2 trail alignment that are not needed for the Phase 3 alignment. Removal shall occur within the same construction season that the facilities within Phase 3 are constructed. The removal (demolition) of the Phase 2 trail segments, shall include an approved erosion control plan that includes the following elements:
 - Prior to removal of the abandoned trail segments, erosion barriers will be installed along the outside edge of the pathway where demolition of the interim trail will occur to prevent trail demolition debris and sediments from entering the creek
 - Upon completion of trail removal activities, revegetation of the disturbed areas (areas not affected by future flood control improvements) with a non-native erosion control seed mix that is compatible with the adjacent riparian woodland and the future flood control project;
 - Revegetation shall occur as soon as possible after trail removal activities have been completed but prior to October 15 of the year the removal occurs; and

- Monitoring of the effectiveness of the erosion control measures during the first year's rainy season and implementation of remedial measures (e.g. reseeded, repair of silt fencing or other erosion control barriers) if sedimentation or erosion is noted.
- d. To prevent sedimentation of the stream and the seasonal wetland, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall install silt fencing (or similar erosion control barrier) along the edge of all grading areas facing the stream channel or proximate to the seasonal wetland prior to the construction of each phase of trail alignments. Surface channel areas of the future flood control project shall be similarly protected during Phase 3 construction. All erosion control barriers shall be maintain in good working condition during the entire length of each construction phase so construction debris and sediments cannot enter Penitencia Creek, the seasonal wetland and the future flood bypass channel. In addition, areas disturbed during construction beyond the paved trail or new bridges, shall be revegetated.
- e. To minimize incursions into the riparian habitat from trail users (and thereby minimizing post-construction runoff impacts of the project), the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall install a low split-rail type fence or vegetative barrier plantings between the riparian woodland and the trail (where the trail is located adjacent to the riparian woodland) concurrent with trail construction in Phases 2 and 3. The City shall also post signs at Bridges #1, #2, #4 and #6 stating that fishing is prohibited and the dumping of non-native fishes or any other objects into the creek is prohibited. The signs shall be designed so they are easily seen but non-obtrusive.
- f. To prevent water quality degradation and the prevent affecting special status wildlife species of steelhead trout, California red-legged frog and other aquatic species that occur in Reach 6 of Penitencia Creek, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division will implement the following measures:
- The project shall incorporate erosion control measures to preclude erosion or sediments from damaging the riparian habitat and entering the channel of Penitencia Creek.
 - Erosion control shall include dust control measures, erosion control seeding of all disturbed areas following construction, and the placement of silt fencing along the outside edge of grading and/or riparian woodland (whichever is greater) to prevent construction debris and sediments from entering the stream during construction;
 - Monitor the effectiveness of the erosion control measures during the first year's rainy season and implement remedial measures (e.g., reseeded, repair of silt fencing) if sedimentation or erosion is noted; and
 - Conduct all work in the "dry" months of May 1 to November 1 when the California red-legged frog is least active.
 - Advise all construction personnel that no California red-legged frogs are to be harmed. Photographs of the species shall be provided to construction workers by the project wildlife biologist so they are aware of the appearance of the species.
- g. To prevent loss or "take" of California red-legged frogs and southwestern pond turtles during construction, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall have a qualified biologist conduct a pre-construction survey for the species. The survey shall consist of one-night survey (for frogs) and on day survey (for pond turtles) conducted within 48 hours of the onset of construction activities (or other USFWS protocol for the frog). If California red-legged frogs or pond turtles are observed during the survey, construction shall be postponed and the appropriate agency shall be contacted for guidance prior to construction proceeding. WSFWS shall be contacted for the frog and CDFG shall be contacted for the pond turtle.
- h. To avoid direct and indirect impacts to woodrats that may occur in the riparian woodland, a qualified wildlife biologist, under contract to the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall conduct a pre-construction survey to document if there are woodrat nests in the construction area. If a nest is present, the biologist shall consult with the CDFG regarding the potential to relocate the nest to an undisturbed portion of the riparian corridor prior to any construction or land disturbance in the area. If relocation is

not possible, CDFG shall be consulted regarding removal of the nests in a manner that allows the woodrats to escape unharmed.

- i. To avoid impacts to tree nesting birds, including raptors, that may occur in the riparian corridor, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall ensure that all site grading and other heavy equipment work within the 100-foot riparian setback area shall occur outside the breeding period of bird species, including raptors (e.g. construction should occur after August 1 and Before March 15). If construction must be scheduled during the breeding season, the City shall implement the following measures:
 - Have a qualified wildlife biologist conduct pre-construction surveys for nesting birds to determine if they occur on the site. The surveys shall be conducted no earlier than 30 days prior to commencement of grading or construction. If birds, other than raptors, are breeding on the site, the City shall postpone construction within a buffer zone of the nest site, as determined by the qualified biologist, until all young have fledged. The project wildlife biologist shall document that the young have fledged prior to commencement of construction.
 - If nesting raptors are observed, the City shall postpone construction within 300 feet of the nest site (radius) until all young have fledged. The wildlife biologist shall document that the young have fledged prior to construction work. The wildlife biologist shall document that the young have fledged prior to construction work.
- j. To avoid the potential loss or roosting sites for the pallid bat (a special status species), the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall, within 60 days prior to scheduled commencement of tree removal, have a qualified biologist survey the trees marked for removal to determine if any of the trees provide suitable crevices or hollows for bat roosts. If suitable roost trees are found, a qualified biologist shall conduct surveys for bats (i.e. using acoustical equipment or guano traps) to determine if these trees are currently occupied by the species. If bat maternity roosts are found in trees to be removed, the City shall schedule tree removal to occur outside the breeding season for the species, as determined by a qualified biologist (e.g. late summer or fall). If crevices or hollows suitable for bat roosts are found, the City shall, prior to tree removal, have a qualified biologist place exclusion devices over the hollows to allow bats to leave the tree, but not be able to return.
- k. To avoid impacts to trees that are to be retained, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division will implement the following measures during all trail construction:
 - Temporary construction fences shall be erected along the dripline of all retained trees (or tree groupings) that occur adjacent to the construction work area. All construction activities, including storage of construction materials, parking of vehicles and deposition of trash, shall be prohibited from these fenced areas.
 - A construction vehicle parking and staging area shall be delineated on the construction plans and in the field so that storage of construction equipment and overnight parking of construction vehicles is confined to a designated area that is, at minimum, partially identified with temporary fencing. The location of the parking staging area shall be approved by the project biologist prior to finalization of the construction plans for each phase of the Master Plan.
 - The condition of the tree protection fencing and fencing delineating the parking and staging area shall be checked on a weekly basis and repaired within 24 hours if damage is noted. Results of these fencing inspections shall be reported to the City of San Jose, Department of Public Works Parks and Recreation Facilities Division. If damage to any tree occurs, a remediation program shall be developed by a certified arborist and implemented according to the arborist's supervision and direction. Success of these remedial measures shall be monitored by the certified arborist and the City.

3. CULTURAL RESOURCES.

- a. To prevent the loss, damage or unnecessary disturbance of historic or archaeological resources or human remains if any are discovered, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall provide monitoring of site excavation activities to the extent determined by a qualified professional archaeologist to be necessary to ensure accurate evaluation of potential impacts to prehistoric resources.

1. If no resources are discovered, the archaeologist shall submit a report to the Director of Planning verifying that the required monitoring occurred and that no further mitigation is necessary.
2. If evidence of any archaeological, cultural, and/or historic deposits is found, hand excavation and/or mechanical excavation will proceed to evaluate the deposits for determination of significance as defined by CEQA guidelines. The archaeologist shall submit reports, to the satisfaction of the Director of Planning, describing the testing program and subsequent results. These reports shall identify any program mitigation that the Developer shall complete in order to mitigate archaeological impacts (including resource recovery and/or avoidance testing and analysis, removal, reburial, and curation of archaeological resources.)
3. In the event that human remains and/or cultural materials are found, all project related construction shall cease within a 50-foot radius in order to proceed with the testing and mitigation measures required. Pursuant to Section 7050.5 of the Health and Safety Code and Section 5097.94 of the Public Resources Code of the State of California:
 - a. In the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, s/he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
 - b. A final report shall be submitted to the Director of Planning. This report shall contain a description of the mitigation programs and its results including a description of the monitoring and testing program, a list of the resources found, a summary of the resources analysis methodology and conclusions, and a description of the disposition/curation of the resources. The report shall verify completion of the mitigation program to the satisfaction of the Director of Planning.

4. GEOLOGY AND SOILS.

- a. To minimize instability problems associated with seismic events and unstable soil conditions, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall have a geologic and geotechnical report prepared by a qualified professional prior to approval of the final construction plans for the project. The report shall address, at minimum, the following issues:
 - Appropriate project design specifications to withstand the effects of seismically induced ground shaking and liquefaction using the Hayward fault as the design parameter;
 - Conduct subsurface borings to determine the exact composition of the underlying soils and use this information to recommend design features to mitigate for identified soil characteristics that can be problematic for the long-term maintenance and use of project facilities;
 - The existence of high groundwater on the site shall be discussed and measures to minimize problems during and after excavation shall be recommended; and
 - Any special techniques that need to be included in the project erosion control plan and drainage plan.

The report shall be reviewed by the City Geologist. Once the report is accepted by the City as adequate, all approved recommendations and guidelines contained in the geologic/geotechnical report shall be incorporated into the final construction plans for the project including appropriate inspections by a qualified professional to ensure report recommendations are being implemented correctly.

- b. To prevent accelerated erosion from occurring as a result of project construction, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall have an erosion control plan prepared by a qualified

professional (geotechnical engineer, civil engineer, landscape architect or certified erosion control specialist) prior to completion of final construction plans for the project. The approved plan shall be incorporated into the construction plans and followed during all site grading and construction activities. The erosion control plan shall include the following performance standards:

A site plan that shows where all disturbed areas will be on the site and which erosion control techniques will be employed in all portions of the disturbance area;

- Restricting grading and land alteration to the dry season (April 15 to October 15) each year;
- Revegetation of all disturbed areas, not covered with impervious surfacing, with seed and mulch, ground cover plantings and mulching or hydroseed and hydromulch as applicable for the portion of the site;
- Initial seeding shall be completed prior to October 15 and include a nurse crop (temporary winter ground cover) of annual barley at a rate of 5 pounds/1,000 square feet or greater;
- Methods to ensure that areas planned for impervious surfacing will not be left in an erosion generating condition;
- Protective barriers around the seasonal wetland, creek channel and appropriate areas of the riparian habitat, such as silt fences or staked straw bales, to prevent sedimentation of these areas of the site; and
- Methods to discharge the pumpage of high groundwater at excavation areas in a manner that does not generate erosion or water quality impacts.

5. HYDROLOGY AND WATER QUALITY.

- a. To adequately control the additional surface drainage generated by the new Mabury Park facilities the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall have an engineered drainage plan prepared for Mabury Park prior to completion of construction plans for the project. At minimum, the drainage plan shall include the following performance standards:
- All new drainage facilities and improvements shall be sized and designed according to engineered drainage calculations prepared for this watershed;
 - An engineering analysis of existing storm sewer inlets and downstream sewer capacity for those existing facilities receiving project runoff shall occur to determine if on-site detention is required to regulate runoff discharge prior to it leaving the site;
 - The design of any necessary drainage detention facilities shall be provided as part of the plan, including their location on the site; and
 - Measures to reduce the velocity of accumulated runoff, such as energy dissipaters and vegetated filter strips shall be designed and correctly sited to mitigate any potential erosion problems generated by increased runoff.

All requirements of the approved drainage plan shall be installed as part of the Master Plan facilities. These facilities shall be inspected by the City's Public Works construction inspector prior to project completion to ensure that they are installed properly.

- b. To prevent drainage and erosion impacts from occurring during the construction phases of the project, as well as ensure all post-construction drainage measures are adequately implemented, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall have a SWPPP prepared based on the drainage plan and erosion control plan. The SWPPP shall be submitted to the RWQCB to obtain a NPDES Permit. All requirements of the NPDES Permit shall be followed during construction.
- c. To ensure that the amount of impervious surfacing will not exceed that which the project drainage and erosion control plans can accommodate, the construction of the post-flood control trail alignment shall include the complete removal of

all impervious and semi-impervious surfacing from the interim trail segments that will not be in use once the post-flood control alignment becomes operational.

6. NOISE.

- a. To reduce construction related noise impacts to the surrounding residential area to insignificant levels, the City of San Jose, Department of Public Works Parks and Recreation Facilities Division shall:
- Require all construction equipment to use mufflers and related noise suppression devices and to have them regularly maintained in good working order.
 - Ensure that all project construction activities, both on- and off-site, be limited to the hours of 7 a.m. to 7 p.m. weekdays.
 - Post a sign that is visible to persons walking or driving by the edge of the site where active construction is occurring that provides the name of a contact person (e.g. disturbance coordinator) and phone number to call if residents are experiencing noise problems in the area. The sign shall remain posted during the entire construction phase at that portion of the site.

PUBLIC REVIEW PERIOD

Before 5:00 p.m. on **May 30, 2003**, any person may:

- (1) Review the Draft Mitigated Negative Declaration (MND) as an informational document only; or
- (2) Submit written comments regarding the information, analysis, and mitigation measures in the Draft MND. Before the MND is adopted, Planning staff will prepare written responses to any comments, and revise the Draft MND, if necessary, to reflect any concerns raised during the public review period. All written comments will be included as part of the Final MND; or
- (3) File a formal written protest of the determination that the project would not have a significant effect on the environment. This formal protest must be filed in the Department of Planning, Building and Code Enforcement, 801 North First Street, San Jose, Room 400 and include a \$50 filing fee. The written protest should make a “fair argument” based on substantial evidence that the project will have one or more significant effects on the environment. If a valid written protest is filed with the Director of Planning, Building & Code Enforcement within the noticed public review period, the Director may (1) adopt the Mitigated Negative Declaration and set a noticed public hearing on the protest before the Planning Commission, (2) require the project applicant to prepare an environmental impact report and refund the filing fee to the protestant, or (3) require the Draft MND to be revised and undergo additional noticed public review, and refund the filing fee to the protestant.

Stephen M. Haase, AICP
Director, Planning, Building and Code Enforcement

Circulated on: April 30, 2003

Deputy

Adopted on: _____

Deputy

MND/SP